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*Attorney for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION**

ONTEL PRODUCTS CORPORATION,

*Plaintiff*

v.

YETI COOLERS, LLC:

*Defendants*

**CIVIL ACTION No.**

**JURY TRIAL DEMANDED**

**PLAINTIFF ONTEL PRODUCT CORPORATION'S COMPLAINT FOR  
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF TRADE DRESS**

Plaintiff, Ontel Products Corporation (hereinafter, "Ontel" or "Plaintiff"), by and through its undersigned counsel, brings this action for a declaratory judgment of non-infringement of any purported trade dress rights allegedly owned by Defendant Yeti Coolers, LLC (hereinafter, "Yeti" or "Defendant") for the functional product configuration and colors of a beverage tumbler. Ontel also seeks a declaratory judgment that any alleged trade dress rights asserted by Yeti in and to the functional product configuration and colors of a beverage tumbler are invalid and unenforceable. Ontel hereby alleges as follows:

### **NATURE OF THE ACTION**

1. This is a civil action arising under the United States Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (“Lanham Act”) and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202 in which Ontel seeks a declaratory judgment of non-infringement of trade dress rights purportedly owned by Yeti and that any alleged trade dress rights asserted by Yeti are invalid and unenforceable.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the claims arising under the Lanham Act (15 U.S.C. § 1051, *et seq.*) pursuant to 28 U.S.C. §§ 1331 (federal subject matter jurisdiction), and 28 U.S.C. § 2201-02 (Declaratory Judgment Act).

3. This Court has personal jurisdiction over Yeti because Yeti conducts business in New Jersey and in this judicial district. Specifically, Yeti’s “Rambler Tumbler” products are sold and shipped to consumers in this judicial district.

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) because Defendant conducts business in this judicial district, a substantial part of the events or omissions giving rise to the asserted counts occurred in this judicial district, a substantial part of the subject property is located here, and the harm to Plaintiff has occurred in this district.

### **THE PARTIES**

5. Plaintiff Ontel is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 21 Law Drive, Fairfield, N.J. 07004.

6. Upon information and belief, Defendant Yeti is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 5301 Southwest Parkway, Suite 2000, Austin, TX 78735.

**GENERAL ALLEGATIONS**

7. Ontel manufactures a 30 oz. insulated beverage tumbler under the mark ROCKY MOUNTAIN TUMBLER. An image of Ontel's ROCKY MOUNTAIN TUMBLER product ("Ontel Product") is shown in **Exhibit A**.

8. Upon information and belief, Yeti also manufactures and sells an insulated beverage tumbler under the name RAMBLER TUMBLER. An image showing Yeti's 30 oz. RAMBLER TUMBLER product ("Yeti Product") is shown in **Exhibit B**.

9. Upon information and belief, on or about September 7, 2016, an Ontel executive met with a buyer from a major national retailer. During the meeting, the buyer stated that Yeti intends to file a lawsuit against Ontel for violating Yeti's intellectual property rights, including Yeti's trade dress rights, due to Ontel's offering for sale and sale of the Ontel Product.

10. On information and belief, Yeti pursues claims against its competition aggressively. In fact, Yeti has filed lawsuits asserting similar trade dress claims against at least twenty-two different manufacturers and/or retailers of insulated beverage containers.

11. Information Ontel obtained from the buyer of the major national retailer regarding Yeti's stated intention to file suit against Ontel alleging its 30 oz. Rocky Mountain Tumbler infringes Yeti's trade dress rights, coupled with Yeti's numerous currently pending lawsuits for trade dress infringement against manufacturers and sellers of 30 oz. insulated tumblers, has given Ontel a reasonable apprehension that Yeti will imminently file suit against Ontel for trade dress infringement. Such accusations, as identified above, have given rise to a case of actual controversy within the jurisdiction of this Court pursuant to 28 U.S.C. §§2201-02.

**COUNT ONE**  
**(Declaratory Judgment of Non-Infringement)**

12. Ontel repeats and re-alleges each and every allegation set forth in the foregoing

paragraphs as though fully set forth herein.

13. The Ontel Product does not infringe any alleged trade dress rights held by Yeti.

14. Yeti's asserted trade dress is unprotectable in that it is not distinctive, it lacks secondary meaning, is functional, is generic and/or there is no likelihood of consumer confusion as to source, affiliation, sponsorship, or connection with Yeti that is cause by Ontel's sale of the Ontel Product.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

A. Declare that the advertisement and sale of the Ontel Product by Ontel and Ontel's customers does not violate any of Defendant's rights under the trademark laws of the United States;

B. Declare that Ontel and Ontel's customers have the right to advertise and sell the Ontel Product free from interference from Yeti, its officers, agents, servants, employees, attorneys, privies, representatives, successors, and assigns, and any and all persons acting by, through, or under authority of Yeti;

C. Declare that Yeti, its officers, agents, servants, employees, attorneys, privies, representatives, successors, and assigns, and any and all persons acting in concert or participation with it be permanently enjoined from:

1. Interfering with, or threatening to interfere with, sale or advertisement of the Ontel Product;
2. Instituting or prosecuting any lawsuit or other proceeding before the United States Trademark Office placing in issue the right to advertise and sell the Ontel Product.

D. Declare that Yeti lacks any ownership rights in the claimed product configuration trade dress and colors used in connection with its Yeti Product.

E. Award Ontel attorney's fees; and

F. Award Ontel such other and further relief, as this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff Ontel Products Corporation hereby demands a trial by jury of all issues so triable.

Dated: September 19, 2016

**BESHADA FARNESE LLP**

By: /s/ Donald A. Beshada

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